

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JASON MARTIN, individually and on)
behalf of all others similarly situated,)
)
)
Plaintiffs,)
)
)
v.)
)
MEDICREDIT, INC., a Missouri) Case No. 4:16-cv-01138
corporation; HCA HEALTH SERVICES)
OF NEW HAMPSHIRE, INC. d/b/a)
“Portsmouth Regional Hospital”, and)
WENTWORTH-DOUGLASS HOSPITAL,)
a New Hampshire non-profit corporation,)
)
)
Defendants.)

**DEFENDANT HCA HEALTH SERVICES OF NEW HAMPSHIRE, INC.
D/B/A MOTION TO DISMISS PLAINTIFF’S
COMPLAINT FOR FAILURE TO STATE A CLAIM**

Defendant HCA Health Services of New Hampshire, Inc. d/b/a Portsmouth Regional Hospital (“Portsmouth Regional”), pursuant to Fed. R. Civ. Proc. 12(b)(6), moves the Court to dismiss Plaintiff’s Complaint (Doc. #1) for failure to state a claim upon which relief can be granted. In support of its Motion, Portsmouth Regional states the following:

On July 13, 2016, plaintiff Jason Martin (“Plaintiff”) filed this putative class action against defendants Medicredit, Inc. (“Medicredit”), Portsmouth Regional, and Wentworth Douglas Hospital (“Wentworth”), alleging violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”), based on phone calls allegedly made by Medicredit on behalf of Portsmouth Regional and Wentworth. Plaintiff does not allege that Portsmouth Regional made any of the phone calls at issue in this case, so it cannot be held directly liable for

violating the TCPA. Portsmouth Regional can only be vicariously liable, if at all, based on Medicredit's conduct.

As set forth in the accompany memorandum of law, which is incorporated herein by reference, Plaintiff's Complaint fails to state a claim upon which relief can be granted and should be dismissed under Fed. R. Civ. Proc. 12(b)(6) because Plaintiff has failed to allege sufficient facts to state a claim based on vicarious liability or ratification against Portsmouth Regional based on Medicredit's alleged conduct. In the alternative, Portsmouth Regional moves to dismiss because, as a matter of law, it cannot be vicariously liable for the actions of Medicredit under the provisions of the TCPA sued upon by Plaintiff.

WHEREFORE, Defendant HCA Health Services of New Hampshire, Inc. d/b/a Portsmouth Regional Hospital prays for an Order dismissing Plaintiff's Complaint with prejudice, at Plaintiff's costs, for failure to state a claim pursuant to Fed. R. Civ. Proc. 12(b)(6), and the Court grant such other and further relief as it deems just and proper.

Dated: August 22, 2016

Respectfully submitted,
SPENCER FANE LLP

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HCA Health Services of New Hampshire, Inc.
d/b/a Portsmouth Regional Hospital*

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2016, I electronically filed the foregoing through the Court's CM/ECF system which will send notification to:

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